

**ORDINANCE NO. 1852**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE NUMBER 1712, THE ZONING ORDINANCE, BY ADOPTING CERTAIN TEXT AMENDMENTS RELATING TO HOME OCCUPATIONS AND TEMPORARY STRUCTURES.**

**Milwaukie Community Development Application ZA-98-03**

**WHEREAS**, this ordinance amends the Milwaukie Zoning Ordinance Section 400-Supplementary Regulations concerning home occupations and temporary structures; and

**WHEREAS**, the City wishes to simplify the process for obtaining zoning permission for use of temporary structures for short term residential occupancy; and

**WHEREAS**, the City wishes to encourage home occupations and protect residential neighborhood character; in accordance with Comprehensive Plan Chapter 4-Land Use, Economic Base and Industrial/Commercial Land Use Element, Objective #2,-Employment Opportunity, Policy 4; and

**WHEREAS**, the City wishes to improve the administration of home occupation applications by identifying and clarifying certain limitations; and

**WHEREAS**, the City wishes to improve the enforcement of home occupation regulations in the interest of preserving residential neighborhood character; and

**WHEREAS**, all required referrals and notices of public hearings on the proposed amendments have been made; and

**WHEREAS**, the proposed amendments were part of an extensive public involvement process associated with the Milwaukie Functional Plan compliance project, including: notice of public hearings to be held on January 26, 1999 and February 16, 1999 that was mailed to all property owners in the City; a public open house held on January 13, 1999; and,

**WHEREAS**, the Functional Plan Compliance Steering Committee, consisting of three Planning Commission members and three Neighborhood District Association Land Use Committee Chairpersons, was formed to assist the development of proposed code changes to implement the recommendations of the Functional Plan Compliance Report; and

**WHEREAS**, the Planning Commission held public hearings on January 26, 1999, and February 9, 1999; and

**WHEREAS**, February 9, 1999 the Milwaukie Planning Commission adopted a motion recommending the City Council approve the proposed amendments; and

**WHEREAS**, the Milwaukie City Council held work sessions on February 1, 1999 and March 15, 1999; and

**WHEREAS**, the Milwaukie City Council held a public hearing on February 16, 1999 and April 6, 1999.

**NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:**

**Section 1. Findings.** Findings of fact in support of these amendments contained in application ZA-98-03 are as follows:

1. The zoning text amendments have been made in conformance with the provisions of Zoning Ordinance Section 1011.5-Legislative Actions.
2. Applications for zoning ordinance text amendments are subject to Milwaukie Zoning Ordinance Section 904-Requirements for Zoning Text Amendments as follows.

**A. Applicable administrative requirements of Zoning Ordinance Section 1003.**

The administrative requirements concerning submission of applications for zoning text amendments have been met.

**B. Reasons for requesting the proposed text amendments.**

**1. Home occupation amendments**

- a. To eliminate certain automotive and other mechanical repair activities as home occupations to protect against potential impacts normally associated with these uses.
- b. To help ensure continued and long term compliance with home occupation approval by specifying that annual renewal is required.
- c. To facilitate preservation of residential character by providing that home occupations that might potentially result in parking related impacts, or that have been subject to enforcement action, be reviewed under the Type II review procedure. *See Zoning Ordinance Section 1011.2.*

**2. Temporary Structure Permits**

To make it easier, quicker, and less costly for persons to obtain zoning permission to occupy temporary structures where the expected term of occupancy is not longer than 6 months.

**C. Explanation of how the proposed text amendments are consistent with other provisions of the Zoning Ordinance.**

The amendments are consistent with current provisions of the Zoning Ordinance. No known inconsistencies exist between the proposed amendments and existing regulations.

**3. Applications for zoning ordinance text amendments are subject to Milwaukie Zoning Ordinance Section 905-Approval Criteria for All Amendments as follows:**

**1. Conformance with applicable Comprehensive Plan goals, policies, and objectives.**

The amendments are consistent with the Comprehensive Plan and preserve the intent, goals, and policies of the Comprehensive Plan. There are no departures from stated goals and policies.

**2. Consistency of proposed development with the intent of the underlying zone.**

The amendments do not result in any development or change of zoning. The above criterion does not apply.

**3. The amendments meet or can reasonably meet applicable regional, state or federal regulations.**

There are no applicable federal policies. The amendments are consistent with Oregon Statewide Planning Goals. There are no known regional policies that might apply to these changes.

**4. The proposed amendments demonstrate existing or planned public facilities and are sufficient to accommodate anticipated development.**

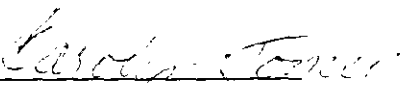
The amendments do not change existing development potential. This criterion does not apply.

**Section 2.** The Milwaukie Zoning Ordinance is amended as described in Exhibit 1.


Read the first time on April 6, and moved to a second reading by 5-0 vote of the City Council.

Read the second time and adopted by the City Council on April 6, 1999

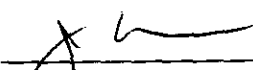
Signed by the Mayor on April 6, 1999

  
Carolyn Tomei, Mayor

ATTEST

  
Pat Duval, City Recorder

APPROVED AS TO FORM  
RAMIS CREW CORRIGAN &  
BACCRACH, LLP

  
City Attorney

# EXHIBIT 1

## Amendments to the Zoning Ordinance (Ord. 1712)

### Community Development Application ZA-98-03

*~~Strikeout text~~ = text to be deleted.*

*Underline text = text to be added.*

#### TEMPORARY STRUCTURES

Section 418 (current Section 417 renumbered to 418 with addition of new Section 402 in ZA-98-02):

##### 418.1 Requirements for approval

Upon application of the property owner, the Community Development Director may approve the location of a temporary structure, such as a ~~mobile home~~, motor home, recreational vehicle, or trailer house, for use as a temporary residence during construction of a permanent dwelling for a period not to exceed ~~12~~6 months where:

- A. there is an emergency hardship resulting from a natural catastrophe such as fire, flood, storm, etc.;
- B. the applicant has applied for a building permit for a permanent dwelling;
- C. the temporary structure will be owner-occupied;
- D. the temporary structure must be removed upon completion of the permanent structure and prior to the issuance of the final certificate of occupancy;

(PLEASE NOTE: Original subsections 418.1.D & E, and references to the same, become renumbered to 418.1.E & F.)

##### 418.3 Review process

Applications for temporary structures shall be processed according to subsection ~~1011.2~~, ~~Type II~~ 1011.1, Type I Administrative review. Temporary permits that exceed the 6-month time period allowed under subsection 418.1 must be reviewed by the Planning Commission under subsection 1011.3.

## HOME OCCUPATIONS

Subsection 401.1.E (deleted, with subsequent subsections renumbered):

~~E. A home occupation shall: not occupy more than one quarter of the ground floor area of the dwelling; maintain the residential character of the building; not have the outward appearance of a business; not detract from the residential character of the neighborhood; not involve outside display or storage of merchandise, materials, or equipment on the premises; not cause noise, odor, smoke, gases, fallout, vibration, heat, or glare to be detectable beyond the limits of the property; not involve the use of detached garage; not have more than five enrollees for instruction as a home occupation. Home occupation applications shall be processed per the procedures outlined in Section 1011.1, Type I Administrative review~~

Section 422 (new):

### 422 HOME OCCUPATIONS

It is the intent of these regulations to support and encourage home occupations but at the same time protect the residential character of the City's residential neighborhoods. A home occupation shall be allowed as an accessory use to all residential uses permitted by right, subject to the following restrictions and approval requirements. No home occupation shall be approved for a use which is not reasonably demonstrated to be accessory and clearly incidental to the residential use. All activities permitted under this Section must be consistent with subsection 422.1 In all cases the home occupation must demonstrate conformance with standards that protect against adverse impacts to neighboring residential uses.

#### 422.1 Home occupation use standards

A home occupation shall:

- A. be incidental and accessory to the residential use of the property;
- B. maintain the residential character of the building and premises;
- C. not have the outward appearance of a business;
- D. not detract from the residential character of the neighborhood; and
- E. be owned and operated by an occupant of the dwelling.

#### 422.2 Special considerations

In evaluating whether an application for home occupation meets the standards of subsection 422.1, the Planning Director may consider potential impacts related to the following characteristics of a home occupation, among others, as necessary for the proper administration of these regulations.

- A. Number of on-site employees who are not members of the family residing on the premises

**HOME OCCUPATIONS continued**

- B. Use of the home to distribute or receive goods
- C. Use of the premises for parking of customer, client, or employee

**422.3 Prohibitions and use restrictions**

- A. Outside display or storage of merchandise, materials, or equipment on the premises or any adjacent right-of-way is prohibited.
- B. Creation of noise, odor, smoke, gases, fallout, vibration, heat, or glare that is detectable beyond the limits of the property is prohibited.
- C. In the case of on-premise instruction, no more than 5 enrollees shall be present at the same time.
- D. Motor vehicle, boat, or trailer repair is prohibited as a home occupation.

**422.4 Permitted signage**

Only 1 home occupation sign is permitted on any property with an approved home occupation. Home occupation signs shall conform to standards governing "on-premise signs" in accordance with Section 14.12.010(a) of the Milwaukie Municipal Code. Home occupation signs shall not be located within the public right-of-way. Home occupation signs located within the public right-of-way may be removed by the City without prior notice.

**422.5 Approvals required**

No business or commercial activity may be conducted without prior approval of a home occupation application by the Planning Director. All applications for home occupation shall be submitted to, and in such form as may be required by, the Planning Director. Home occupations require a Milwaukie business license.

**422.6 Term of approval**

Home occupation approvals are in effect for one year from the official date of approval, as shown on the application form. Continuation of business activity associated with an expired home occupation shall be considered a violation of these regulations.

**422.7 Annual renewal required**

All approved home occupations require annual renewal. Annual renewals shall be reviewed for consistency with the standards governing home occupations. It is the responsibility of the operator of the home occupation to submit application for renewal in a timely fashion.

## HOME OCCUPATIONS continued

### Section 422 (new) continued:

#### 422.8 Approval process

- A. Applications for home occupation shall be subject to review procedures of subsection 1011.1, Type I Administrative review, except as provided in subsection 422.8.B.
- B. For renewals, a Type II Administrative review shall be required for the following.
  - 1. Any home occupation for which an enforcement action was brought for violation of home occupation regulations in the year prior to the application for renewal.
  - 2. Any home occupation for which enforcement action was brought to seek compliance with conditions of prior approval in the year prior to the application for renewal.

Applications for home occupation may be approved, denied, or approved with conditions.

#### 422.9 Revocation

A home occupation approval may be revoked by the Planning Director upon a finding that the applicant provided false or incomplete information, that activities related to the home occupation are inconsistent with the standards of this Section, that activities related to the home occupation are inconsistent with conditions of approval, or that activities not related to the home occupation being conducted on the same premises constitute a violation of any section of the Milwaukie Municipal Code and related ordinances. No aspect of this Section shall prevent enforcement of violations as otherwise provided in this Ordinance or the Milwaukie Municipal Code.

#### 422.10 Application fee

A fee established by resolution of the City Council shall be paid to the City of Milwaukie upon the filing of an application. Such fees shall not be refundable.

#### 422.11 Limitations

Only 1 home occupation is allowed per residence, except that 2 may be permitted provided no employees not residing in the home are engaged in the conduct of any business activity on the premises.